IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 1216 of 2001
(Old No. 08 of 1989)

United India Insurance Company Ltd.
Post Box No. 11, Tikonia
Haldwani. .....Insurer/appellant.

Versus

1. Km. Nandi Devi
   D/o Sri Jagatram
   R/o Chintpur
   P.O. Kaladhungia
   District Nainital through her next friend
   and natural guardian father Sri Jagatram
2. U.P. State Road Transport Corporation
   through its Regional Manager, Nainital
3. Sri Diwan Singh (since deceased)
   R/o Panuwanaula
   P.O. Panuwanaula, District Almora

3/1 Shri Rajendra Singh
3/2 Shri Shivraj Singh
3/3 Shri Mohan Singh
All three sons of Late Diwan singh
All R/o Panuwanaula
District Almora..... Respondents

Shri Pankaj Purohit, Advocate for the appellant.
Shri Kurban Ali, Advocate for the respondent No.3.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 110-D of Motor Vehicles Act, 1939, is directed against the award dated 31.08.1988 passed by Motor Accident Claims Tribunal (Special Judge), Nainital, whereby claimant was awarded compensation to the tune of Rs. 1,00,000/- and the United India Insurance Company (the present appellant) was directed to pay the sum awarded.

2. Heard learned counsel for the parties and perused the record.

3. Brief facts of the case are that on 16.05.1987, Nandi Devi, a young girl aged 7 years was travelling in bus registration No. URN 9757, owned by U.P. State Transport Corporation. When the bus was on its way from Nainital to Haldwani, another bus registration No. URN 525, which was owned by respondent No. 3- Diwan Singh, was being driven rashly and negligently by its driver, collided with the bus registration No. URN 9757. Consequently, in the accident, the young girl lost her hand. She filed a claim petition before Motor Accident Claims Tribunal for compensation of Rs. 5,00,000/-. The vehicle URN 525 was insured, at the time of the accident, with respondent/appellant- United India Insurance Company. The claim petition was contested by the owner as well as by the insurance company. On the perusal of the pleadings, tribunal framed following issues:-

1. *Whether Km. Nandi was injured in an accident in collision of bus registration No. URN 9757 and bus registration No. URN 525?*
2. *Whether the accident took place due to rash and negligent driving on the part of driver of bus registration No. 525?*

3. *To what amount of compensation the claimant is entitled and from whom?*

4. After recording the evidence and hearing the parties, the tribunal found that it was the driver of bus registration No. URN 525, who was rash and negligent in driving the vehicle, and not of the bus registration No. URN 9757. It further found that the injured is entitled to compensation to the tune of Rs. 1,00,000/- for permanent disability, she has suffered in the accident. The tribunal accordingly directed the United India Insurance Company (present appellant) with whom the vehicle URN 525 was insured, at the time of accident, to pay the awarded sum. Aggrieved by the same this appeal has been preferred.

5. Shri Pankaj Purohit, learned counsel for the appellant drew attention of this Court to the provision contained in Clause (b) of sub-section (2) of Section 95 of Motor Vehicles Act, 1939, which provides as under:-

"(2) Subject to the proviso to sub-section (1) a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:-

(a).....

(b) Where the vehicle is a vehicle in which passengers are carried for hire or reward or by

reason of or in pursuance of a contract of employment-

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) .....”

6. From the evidence on record, it is true that injured/claimant was not passenger of the vehicle, injured with the insurance company, as such, the present case is covered by Clause (b) of sub-section (2) of Section 95 of Motor Vehicles Act, 1939. That being so, the liability of the appellant/insurance company is only up to the limit of Rs. 50,000/- Therefore, the appeal deserves to be allowed partly to the extent that out of the awarded sum of Rs. 1,00,000/-, the appellant-United India Insurance Company is liable to make payment to the limit of Rs. 50,000/-. Remaining 50% of the sum out of the award of Rs. 1,00,000/-, the liability is that of the owner i.e. respondent No. 3- Diwan Singh.

7. For the reasons as discussed above and in view of the principle of law laid down in New India Assurance Co. Ltd Vs. C.M. Jaya (2002) 2 Supreme Court Cases 278, the appeal is partly allowed. The impugned award is modified to the extent that the liability of the appellant-United India Insurance Company shall be to the extent of Rs. 50,000/- out of Rs. 1,00,000/-, awarded by the tribunal. The full

amount, if already paid by the appellant, it may recover the 50% of the sum deposited by him from the owner of the vehicle.

(Prafulla C. Pant, J.)

Dt:22.08.2006
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